



## Memorandum

**To:** All Legislators  
**From:** Tom Larson, Vice President of Legal and Public Affairs  
**Date:** December 11, 2011  
**Re:** AB 403/SB 300 -- Expiration of Variances

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The Wisconsin REALTORS® Association (WRA) supports AB 403/SB 300 which codifies current case law regarding when local zoning variances expire. Specifically, AB 403/SB 300 clarifies that variances from local zoning ordinances run with the land and do not expire unless expressly stated by the local municipality on or before the date the variance was granted.

**Variances are important land-use tools used by municipalities to grant relief to property owners on a case-by-case basis** when current local zoning regulations place unreasonable restrictions on the ability of such property owners to use and enjoy their property. For example, if a property owner wants to construct a deck or add an additional bathroom on the back of his/her house and the current zoning ordinance prohibits such an improvement, the municipality will often grant a variance and allow the deck or bathroom to be constructed under certain conditions. This practice allows property owners, whose lifestyles require more modern conveniences, to update their older homes rather than being forced to move to newer homes.

**Current Wisconsin case law recognizes that variances run with the land and are not specific licenses to a particular property owner.** See Goldberg v. City of Milwaukee Board of Zoning Appeals, 115 Wis. 2d 517, 523 (1983). Moreover, according to the leading authority on zoning and planning law, the general rule of law is that a zoning variance does not expire as long as the circumstances warranting the variance have not changed. See Rathkopf, *The Law of Zoning & Planning* § 58.24. The underlying rationale for allowing variances to exist without expiration is that the purpose of a variance is to allow a property owner to make reasonable use of his or her property and, thus, a variance should not expire unless the circumstances affecting the property have changed so that the property can be used in the desired without the variance. *Id.*

**Some local communities, however, are not aware of the law** and recently attempted to repeal variances because they were not used by the property owner to whom they were granted. While the issues were eventually resolved, the current property owner has had to incur significant frustration, delays, and legal expenses in order to resolve these issues. This confusion has created problems for property owners, lenders, and others involved in real estate transactions.

**To avoid further confusion, AB 403/SB 300 attempts to codify current Wisconsin case law** by stating that a variance from a local zoning ordinance does not expire unless (a) the municipality granting the variances has expressly established an expiration date for variances by ordinance, or (b) the local board of appeals/adjustment that granted the variance establishes an expiration date at the time the variance was granted.